

### REMARKS

#### Paragraphs 1 -7 of the Office Action

5 Claims 1-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number 4,948,078 to Dumenigo in view of U.S. Patent Number 6,644,493 to Walton et al.

The applicant has amended the preamble and now believes that as the prior art combination would not teach clothing within the container, claim 9 is now in condition for allowance.

10 As to applicant's previous statements regarding the lid, the Examiner has, in effect, agreed with and enhanced applicant's position that Dumenigo would not use a lid as defined by the applicant. The Examiner makes that statements that "there is nothing to prevent use of a lid that *would be designed* to provide the required clearance to close properly," and "*Use of a lid with ventilation holes* would accomplish the desired  
15 objectives for the lid..." The Examiner has confused what could be done with what is taught. The Examiner cannot make a lid as the Examiner wishes to define and alter it, but must use a lid as taught in the prior art against that defined in applicant's claims. This is a classic example of the Examiner using hindsight reconstruction because, by the Examiner's own statement, there is nothing taught within the prior art to suggest the  
20 combination. In fact, the Examiner's statements point to a teaching away of the lid. If the lid requires ventilation holes, then it serves no purpose to the applicant, as the applicant's device needs to retain odors.

The Examiner is using speculation to alter the lid in order to justify the inclusion of Dumenigo. It is exactly applicant's point that the Dumenigo could not and would not  
25 use a lid as applicant has done. If, as Examiner states, the lid could be attached to contain odors therein, then how can the Examiner make the opposite conclusion that one would be directed to putting ventilation holes through the lid? The holes would be needed for Dumenigo because, as applicant explained earlier, the sponge would not dry out if a lid were used. But the holes would prevent applicant's device from retaining odors within  
30 the container.

In short the Examiner, in order to form a cohesive argument, requires a teaching that is solely motivated by the prior art. The Examiner has instead modified the prior art so that it will work for the Examiner's analysis, but will no longer function for its intended purpose. The Examiner relies on speculation for what could be done instead of what is being taught. As the Examiner's argument only strengthens applicant's case that the cover would not be used with Dumenigo, it is believed that the remaining claims, as currently presented, are in condition for allowance.

The applicant respectfully requests withdrawal of the rejection.

10

**CONCLUSION**

5

In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

10



Sean A. Kauthold (Reg. No. 46,820)

P.O. Box 89626

15

Sioux Falls, SD 57109

(605) 334-1571 FAX (605) 334-1574

Date: 4/8/05